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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:)	In Proceedings Under Chapter 11
)	
BAPTIST FOUNDATION OF ARIZONA, an)	Case Nos. 99-13275-ECF-GBN through 99-
Arizona nonprofit 501(c)(3) corporation, and)	13364-ECF-GBN
related proceedings,)	
)	All Cases Jointly Administered Under Case
)	No. 99-13275-ECF-GBN
Debtors.)	
)	DEBTORS' OBJECTION TO CLAIMS OF
)	WILLIAM P. CROTTS
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Pursuant to Rule 3007 of the Bankruptcy Rules of Procedure and Section 502(a) of the Bankruptcy Code, Debtor and Debtor-in-Possession, Baptist Foundation of Arizona, Inc. (and or its affiliates and subsidiaries, some of which also may be co-debtors, as applicable; collectively “**BFA**”), submits the following objection to the proofs of claim filed by William P. Crotts (“**Crotts**”). In support of this objection, BFA offers the following memorandum of points and authorities.

MEMORANDUM IN SUPPORT OF OBJECTION

I. INTRODUCTION

Crotts is the former President and Chief Executive Officer of Baptist Foundation of Arizona, as well as a former officer and director of various BFA subsidiaries and affiliates. Crotts has filed two proofs of claim in this case. The first claim seeks \$153,351.08 as deferred compensation. The second claim seeks an unspecified amount of damages arising from Crott's termination by BFA, including reimbursement and indemnity. BFA objects to both claims on a number of grounds, and reserves the right to seek offsets against these claims to the extent that the claims otherwise would be allowed.

II. FACTS

1. On February 29, 2000, Crotts filed a proof of claim seeking \$153,351.08 in deferred compensation from BFA. Attached as exhibits to the proof of claim are
 - a. an Income Statement for BFA Deferred Compensation Account, Trust # 00431, showing a balance as of July 31, 1999 of \$5,318.80;
 - b. a Quarterly Accounting Summary from the Annuity Board of the Southern Baptist Convention (p.5 of 5) showing an ending balance as of June 30, 1999 of \$52,782.30;
 - c. an Asset Review Report for BFA Deferred Compensation Account 00431 showing a Total Investments balance as of July 31, 1999 of \$100,569.75; and,
 - d. an array of contractual documents regarding BFA's deferred compensation program.
2. Crotts' interest in BFA's deferred compensation plan is subject to a vesting schedule that extends over many years. At the time that he was terminated by BFA, Crotts had not yet vested in the plan.

3. Sometime prior to his termination, Crotts directed BFA to extend an approximate \$130,000 loan to one of his relatives, using his interest in the deferred compensation plan as security for that debt. BFA complied with Mr. Crotts' request and made the loan. That loan is in default.
4. On or about March 20, 2000, Crotts filed a second proof of claim in an unspecified amount, based on claims for "damages arising from . . . termination . . . including reimbursement and indemnity of any and all fees and costs . . . as a result of and arising out of his employment by the Baptist Foundation of Arizona."

III. STANDARD AND BASIS FOR OBJECTION

Objections to claims are governed by 11 U.S.C. § 502(a), which provides that "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, . . . objects." Section 502(b) provides that "[i]f such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount." Federal Rule of Bankruptcy Procedure 3001(f) provides that a proof of claim filed in accordance with the rules "shall constitute prima facie evidence of the validity and amount of the claim." The burden of proof is on the objecting party to produce evidence equivalent in probative value to that of the creditor to rebut the prima facie effect of the proof of claim. However, "the ultimate burden of persuasion is always on the claimant." In Re Holm, 931 F.2d 620, 623 (9th Cir. 1991) (citing 3 L. King, *Collier on Bankruptcy* § 502.02, at 502-22 (15th ed. 1991) (footnotes omitted)). A properly supported objection to a claim initiates a contested matter under the Bankruptcy Rules of Procedure. See Fed. R. Bankr. P. 3007(adv. comm. note).

A. Crotts' Claim for Deferred Compensation

Crotts has no present interest in the deferred compensation plan. Crotts never vested in the plan prior to his termination. Even if he had, he has pledged that interest as security for a loan to one of his relatives, which loan now is in default. Accordingly, Crotts' claim for over \$153,000 is without merit and should not be allowed.

B. Crotts' Claim for Reimbursement and Indemnity

Crotts' claim for reimbursement and indemnity (which may also include unspecified damages for termination) should be disallowed. The claim is contingent and unliquidated, and falls squarely within the scope of Section 502(e) of the Bankruptcy Code. Section 502(e)(1) applies to claims for reimbursement or contribution as characterized under state or federal statutory law or common law. See 5 Collier on Bankruptcy, § 502.06 (15th ed. 2000). Usually this section applies to contractual relationships, but it has been applied to joint tortfeasors, such as those liable under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA). Id. at n.8; see also In re Hemingway Transport, Inc., 993 F.2d 915, 923 (1st Cir. 1993) (applying section 502(e)(1)(B) to CERCLA tort obligations due to the danger of double claims by both the claimant and the EPA for future cleanup costs).

The Ninth Circuit applied a three part test under this statute to determine if a claim should be disallowed, stating that "if (1) the claim is for reimbursement or contribution; (2) the party asserting the claim is liable with the debtor on the claim of a creditor; and (3) the claim is contingent at the time of allowance or disallowance," then the claim is disallowed. In re Dant & Russell, Inc., 951 F.2d 246, 248 (9th Cir. 1991).

The district court in In re American Continental Corp., 119 B.R. 216 (D. Ariz. 1990) applied the three part test to an accounting firm's proof of claim against the debtor estate.¹ The proof of claim stated that the debtor owed the accounting firm damages based on the damages third parties demanded of the accounting firm. Id. at 218. The court stated that the claim was disallowed under § 502(e)(1)(B) because it was (1) secondary liability based upon a third party claim; (2) based upon an allegation of joint wrongdoing by a third party; and (3) contingent on the outcome of untried litigation. Id. at 219.

Crotts' claim for "reimbursement and indemnity," although lacking any detailed explanation, likely stems from anticipated claims by investors and others of fraud, breach of fiduciary duty, or other wrongdoing while an officer of BFA (see below). If this proves true, his claim should be disallowed under Section 502(e) because, applying the Ninth Circuit test, the claim 1) is for reimbursement, 2) would likely involve BFA and Crotts jointly being liable to a creditor or other third party, and 3) is contingent at this time.

Moreover, the claims that have been made against BFA and Crotts, and that may still be made against Crott, allege intentional acts of fraud and other conduct that is not subject to indemnity afforded under BFA's corporate Bylaws. In fact, Arizona law prohibits BFA from indemnifying Crotts for the type of conduct that is at issue here.

C. General Objection

As a result of ongoing internal investigations, as well as other information provided to BFA, BFA believes that it has certain civil claims for money damages against Persons, as defined in the Liquidating Plan, who may have been responsible for BFA's failure. The term

¹ The In re American Continental Corp. case predates the Ninth Circuit decision, but applied the same widely used three part test. See id. at 218.

“Litigation Claims” is broadly defined in the Liquidating Plan. Exhibit 4 to the Liquidating Plan lists certain Litigation Claims. Specifically, Exhibit 4 identifies proceedings in which BFA has asserted claims against certain Persons, as that term is defined in the Liquidating Plan. Exhibit 4 also identifies certain persons against whom BFA and its Non-Debtor Affiliates may have claims, but against whom BFA and the Non-Debtor Affiliates have not commenced legal proceedings because the claims are not fully developed, either legally or factually. As set forth on Exhibit 4, such persons include former officers and directors of BFA, including Crotts.

Investigations into claims against potentially responsible parties are ongoing and will continue through the conclusion of these Chapter 11 proceedings and in connection with the actual prosecution of Litigation Claims. The events leading to BFA’s failure are complex and occurred over time. Thus, despite the due diligence conducted to date by BFA, there are still many unanswered questions and facts to discover. Nonetheless, BFA intends to bring claims against Crotts, but has not yet done so because its investigation is still proceeding. Accordingly, BFA reserves the right to claim an offset to the claim of Crotts arising from a damages claim that will be asserted and proven in litigation not yet commenced.

IV. CONCLUSION

For the above-described reasons, BFA respectfully requests that the Court disallow the claim of Crotts.

RESPECTFULLY SUBMITTED this 7th day of November, 2000.

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